

156 FERC ¶ 61,108
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

August 15, 2016

In Reply Refer To:
Duke American Transmission Company, LLC
Docket No. ER16-2170-000

American Transmission Company LLC
Brian C. Drumm, Esq.
Associate General Counsel
W234 N2000 Ridgeview Parkway Court
Waukesha, WI 53188

Dear Mr. Drumm:

1. On July 8, 2016, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Duke American Transmission Company, LLC (Duke) filed a request for a limited, one-time waiver of Attachment FF, section VIII.D.4 of Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)³ to allow MISO to accept two hard copies of Duke's proposal that was submitted in response to MISO's Request for Proposals for the Duff-Coleman EHV 345 kV Competitive Transmission Project. For the reasons discussed below, we grant Duke's request for limited waiver.
2. Notice of Duke's filing was published in the *Federal Register*, 81 Fed. Reg. 47,164 (2016), with interventions and protests due on or before July 18, 2016. MISO and Ameren Services Company filed timely motions to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2015).

³ MISO, FERC Electric Tariff, Attachment FF, Transmission Expansion Planning Protocol (49.0.0). Unless indicated otherwise, all capitalized terms shall have the same meaning given them in the Tariff.

timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

3. Duke requests a limited, one-time waiver of the emphasized portion of Attachment FF, section VIII.D.4, Proposal Submission Format, of MISO's Tariff, which states as follows:

Three (3) copies of each Proposal shall be submitted to the Transmission Provider prior to the Proposal Submission Deadline; **two (2) copies of the Proposal shall be submitted in hard copy form and must be delivered to the address specified in the [Request for Proposal] no later than 5:00 PM EPT on the Proposal Submission Deadline** and one (1) copy of the Proposal shall be submitted in electronic form as further specified in the [Request for Proposal] no later than 5:00 PM EPT on the Proposal Submission Deadline. . . .⁴

4. Duke states that it timely submitted a full and complete electronic copy of its proposal and the \$100,000 Proposal Deposit (as required in Attachment FF, section VIII.D.2) prior to the Proposal Submission Deadline of July 6, 2016 at 5 p.m. EPT. Duke also states that the required two hard copies were timely provided to FedEx, the delivery company, on July 5, 2016, for morning delivery on July 6, 2016. Duke states that, due to an error beyond Duke's control, the package was delayed at one of FedEx's sort facilities and did not arrive at MISO's Eagan, MN, location until the morning of July 7, 2016. Duke states that FedEx has acknowledged that it was solely responsible for the delivery error.⁵

5. Duke states that in granting tariff waivers, the Commission generally focuses on four criteria: (1) the entity seeking the waiver acted in good faith; (2) the waiver is of limited scope; (3) a concrete problem needs to be remedied; and (4) and the waiver will not have undesirable consequences, such as harming third parties.⁶

⁴ Duke Request for Waiver at 2 (emphasis added).

⁵ *Id.* at 2-3. Duke includes as an attachment to the filing a letter from FedEx to Duke, dated July 8, 2016, stating that "due to a delay at our Indianapolis sort facility, [the shipment] did not reach the destination station to deliver as expected....we sincerely regret any difficulties and inconvenience this has caused...." *Id.* at Attachments.

⁶ *Id.* at 3 (citing *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006)).

6. Duke states that it acted in good faith in complying with MISO's Attachment FF requirements because it (1) timely submitted the Proposal Deposit of \$100,000 and the required electronic copy of its proposal and (2) correctly addressed the FedEx package and timely provided the two hard copies of its proposal to FedEx to allow for timely delivery to MISO before the Proposal Submission Deadline. Duke asserts that FedEx's late delivery of the hard copies was beyond Duke's control.⁷ Duke states that the requested waiver is limited in scope to this instance of adhering to the provision of Attachment FF, section VIII.D.4 that requires delivery of two hard copies of a proposal by the Proposal Submission Deadline, and Duke timely complied with the electronic filing requirement in that section and thus a full and complete copy of Duke's completed proposal was submitted to MISO prior to the Proposal Submission Deadline.⁸ Duke states that the request for limited waiver relates to a concrete problem that needs to be remedied because, absent a Tariff waiver, it is not clear whether MISO has the authority to evaluate Duke's proposal as timely filed.⁹ Further, Duke states that granting the request for limited waiver will not have undesirable consequences or harm third parties because (1) Duke did not have any additional time to develop its proposal or gain any other competitive advantage due to the delivery error, and (2) Duke is similarly situated to other Qualified Developers submitting proposals and no other Qualified Developers submitting proposals will be disadvantaged or otherwise harmed by granting the limited waiver.¹⁰

7. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹¹ We find that Duke's requested waiver satisfies these conditions, as discussed below.

8. We find that Duke acted in good faith in complying with MISO's Attachment FF requirements by timely submitting the Proposal Deposit and the required electronic copy

⁷ *Id.*

⁸ *Id.* at 3-4.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

of its bid response and timely providing the two hard copies of its proposal to FedEx to allow for timely delivery to MISO before the Proposal Submission Deadline. We also find that the requested waiver is of limited scope because it is limited to this instance of Duke adhering to the provisions of Attachment FF, section VIII.D.4. Further, we find that Duke's request for waiver addresses a concrete problem, which is MISO's evaluation of Duke's proposal as timely filed after the delay in receiving the two hard copies of the proposal due to circumstances outside of Duke's control. Finally, we find that the waiver will not have undesirable consequences, such as harming third parties because Duke is similarly situated to other Qualified Developers submitting proposals, and no parties protested the instant filing. Therefore, we grant Duke's request for limited waiver, as requested.

By direction of the Commission.

Kimberly D. Bose,
Secretary.